

ENTERED

March 10, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

JOSE LUIS ONTIBEROS-SILBERIO,	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 1:15-cv-213
	§	(Criminal No. 1:13-cr-282-1)
UNITED STATES OF AMERICA,	§	
Respondent.	§	
	§	

**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Before the Court is the Magistrate Judge's Report and Recommendation in the above-referenced cause of action. No objections have been filed. After a de novo review of the file, this Court agrees that Ontiberos-Silberio may not rely on *Johnson v. United States*, 135 S. Ct. 2551 (2015) to overcome the untimeliness of his § 2255 motion because he was not sentenced pursuant to the "residual clause" of the Armed Career Criminal Act, *see* 18 U.S.C. § 924(e), nor was he sentenced pursuant to the "career offender provision" of the United States Sentencing Guidelines, *see* U.S.S.G. § 4B1.1. As such, Ontiberos-Silberio's one-year limitation period began to run on December 16, 2013, the date on which the judgment of his conviction became final. *See* 28 U.S.C.A. § 2255(f). Since Ontiberos-Silberio filed his § 2255 motion on December 3, 2015, his motion is untimely.

For the foregoing reasons, the Magistrate Judge's Report and Recommendation is **ADOPTED**. It is therefore, **ORDERED, ADJUDGED,** and **DECREED** that Ontiberos-Silberio's § 2255 Motion (Dkt. No. 1) is

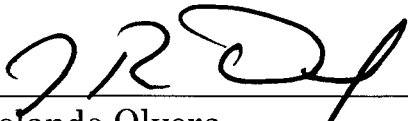
DISMISSED as untimely pursuant to 28 U.S.C. § 2255(f)(1). A certificate of appealability shall not issue.

Signed on this 9th day of March, 2016.

United States District Court
Southern District of Texas
FILED

MAR 09 2016

David J. Bradley, Clerk of Court



Rolando Olvera
United States District Judge